

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PATRICIA T. COVINGTON and DEPARTMENT OF THE AIR FORCE,
ROBINS AIR FORCE BASE, Ga.

*Docket No. 95-2548; Submitted on the Record;
Issued January 8, 1998*

DECISION and ORDER

Before DAVID S. GERSON, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether appellant has established a recurrence of disability commencing May 19, 1993 causally related to her September 15, 1970 employment injury.

In the present case, appellant filed a claim alleging that she sustained injuries during a fall in the performance of duty on September 15, 1970. The Office of Workers' Compensation Programs accepted the claim for contusions to the left knee, thigh and lower leg, contusion to the right knee and an L4-5 herniated disc. By decision dated April 24, 1991, the Office determined that appellant's part-time employment in a modified position represented her wage-earning capacity and appellant's compensation was adjusted.

On June 8, 1993 appellant filed a claim for a recurrence of disability commencing May 19, 1993. The record indicates that appellant had been working 20 hours per week in a light-duty job and then stopped working on May 19, 1993. By decision dated October 4, 1993, the Office denied the claim, finding that the medical evidence was not sufficient to establish causal relationship between the claimed recurrence of disability and the September 15, 1970 employment injury. The Office denied modification by decisions dated February 10, April 15, July 22 and December 1, 1994. By decision dated June 19, 1995, the Office denied a request for reconsideration without review of the merits of the claim.

The Board has reviewed the record and finds that appellant has not established a recurrence of disability commencing May 19, 1993 causally related to her September 15, 1970 employment injury.

When an employee, who is disabled from the job he held when injured on account of employment-related residuals, returns to a light-duty position or the medical evidence establishes that light duty can be performed, the employee has the burden to establish by the weight of reliable, probative and substantial evidence a recurrence of total disability. As part of this

burden of proof, the employee must show either a change in the nature and extent of the injury-related condition, or a change in the nature and extent of the light-duty requirements.¹

In the present case, appellant was working in a light-duty position at four hours per day, and has filed a claim for a recurrence of total disability commencing May 19, 1993. Appellant's attending physician, Dr. Norman J. Smith, an orthopedic surgeon, indicated in a May 20, 1993 treatment note that appellant was having pain between her shoulder blades and her low back. Dr. Smith noted that appellant had been moved to "another job situation. She was doing a lighter line of work apparently but the new job seems to be aggravating her problem." Dr. Smith recommended that appellant not work. With regard to the light-duty position, the employing establishment indicated in a June 7, 1993 letter that appellant had been relocated to an adjacent room as of May 10, 1993. The employing establishment indicated that appellant remained assigned to the same position description performing duties described therein, noting that prior to the relocation she was performing editing duties and after May 10, 1993 she was mostly performing edit duties as well as performing limited work on a microfilming machine and scanner. According to the employing establishment, appellant's job assignments did not require more than light lifting and allowed her to sit, stand, or move about as necessary.

As noted above, a claimant may be able to establish a recurrence of disability by showing a change in the nature and extent of the light-duty job. In this case, however, the employing establishment indicated only that as of May 10, 1993 appellant performed some limited work with a microfilming machine, which is within her supply clerk job duties, did not involve more than light lifting and allowed appellant to adjust her position as necessary. There is no indication that any job duties performed were outside any physical restrictions imposed by a physician.² Accordingly, the Board finds that appellant has not established a recurrence of disability based upon a change in the nature and extent of a light-duty job.

With regard to the medical evidence, the Board finds that appellant has not established a change in the injury-related condition resulting in additional disability commencing May 19, 1993. Dr. Smith notes in his May 20, 1993 treatment note that appellant's new job seemed to be aggravating her condition, without providing further explanation.³ In a report dated October 19, 1993, Dr. Smith provided a history from appellant's initial treatment in 1989, opining that appellant's back pain and leg pain resulted from irritation of the sciatic nerve and lumbar disc pathology with subsequent surgery. He stated that appellant's symptoms were directly related to the "original low back problem," although Dr. Smith does not discuss the September 15, 1970 employment injury or the period commencing May 19, 1993.

In a note dated May 16, 1994, Dr. Smith indicated that appellant had provided a history of a September 15, 1970 injury. Dr. Smith indicated that he saw appellant after the onset of pain,

¹ *Terry R. Hedman*, 38 ECAB 222 (1986).

² *See Cloteal Thomas*, 43 ECAB 1093 (1992).

³ The Board notes that if appellant is claiming that her light-duty job aggravated her back condition, that would constitute a new claim for injury, not a recurrence of disability; *see* Federal (FECA) Procedure Manual, Part 2 – Claims, *Recurrences*, Chapter 2.1500.3 (January 1995).

that it was difficult to reconstruct anything that far in the past and that he told appellant “with regard to the etiology of the back pain I cannot be absolutely certain. Most patients with the onset of back pain from a fall like that would have the onset of back pain within two to three days but she says it was maybe a month. She said she is vague on that and cannot recall exactly the time and therefore I cannot be certain with regard to the etiology of her pain.” The Office has accepted a herniated disc in this case; the issue is whether there was a change in the nature of the injury-related condition commencing May 19, 1993. Dr. Smith does not address this issue. In a report dated October 11, 1994, Dr. Smith stated that he saw appellant on May 20, 1993, when appellant was suffering from a worsening of her condition or an exacerbation of her chronic back problem. He further stated that appellant’s “underlying problem was related to an on-the-job accident that occurred September 15, 1970 and I recommended that she not work and she did not work until August 1, 1994 due to her lower lumbar problem which was in turn caused by the on-the-job accident of September 15, 1970.” The probative value of this statement is limited by the lack of accompanying rationale or explanation as to how appellant’s injury-related condition had worsened as of May 20, 1993. It is appellant’s burden to submit reasoned medical evidence, based on a complete background, establishing that disability commencing May 19, 1993 was causally related to the employment injury. Dr. Smith does not explain how the employment-related low back injury had changed, nor does he clearly explain the cause of any change in appellant’s condition. The Board therefore finds that appellant has not established a recurrence of disability commencing May 19, 1993.

The decisions of the Office of Workers’ Compensation Programs dated June 19, 1995, December 1 and July 22, 1994, are affirmed.

Dated, Washington, D.C.
January 8, 1998

David S. Gerson
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member